QUID NOVI

McGill University, Faculty of Law
Volume ~~28~~ 29, no. 18, March 4, 2008

QUID NOVI

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IN THIS ISSUE...

EDITORIAL

by Cassandra Brown
Co-Editor-in-Chief

A warm welcome back to school! I hope that you had a chance to relax over the break, whether with a sunny vacation or just a cup of hot chocolate and a coursepack in front of the fireplace at Second Cup. With a house-guest who was visiting Montreal for the first time, I was attempting a combination of winter vacation and study. Those two things don't normally go very well together, but for me they led to a (little) insight into an issue that was à la fois académique et très personnel.

It started a few weeks ago in Talmudic Law, when we covered the history of the law of lost objects. Over 2000 years ago in the Kingdom of Israel, this law basically stated that a finder cannot take a lost trivial object for his own benefit until its owner has abandoned hope of re-finding it (an event known as "ye'ush"). To explain how Jewish legal controversies were debated in the medieval period, our professor, Rabbi Whitman, presented two opposing arguments on the meaning of this law and asked the class which one made more sense. I argued for the opinion that creates a legal presumption of ye'ush for certain commonly found objects even where the finder has no knowledge that this abandonment of hope has occurred. I like to be able to just get on with things in life like that, instead of creating situations that cause much drama and unnecessary expenditure of effort.

Later that day however, in a bout of serendipitous misfortune, I lost my favorite winter hat somewhere in the faculty. I lamented about this for a long time: I visited all three (?!) lost and found boxes in the faculty without success. I asked caretakers and Pinos staff if they had seen it. I retraced my steps over and over. Even though the situation began to seem hopeless, I did not actually give up hope of finding my beloved hat. [Contd, p 4]

The *Quid Novi* is published weekly by the students of the Faculty of Law at McGill University.
Production is made possible through the direct support of students.

Les opinions exprimées sont propres aux auteurs et ne réflètent pas nécessairement celles de l'équipe du *Quid Novi*.

The content of this publication does not necessarily reflect the views of the McGill Law Students' Association or of McGill University.

Envoyez vos commentaires ou articles avant jeudi 5pm à l'adresse: quid.law@mcgill.ca

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http://www.law.mcgill.ca/quid/epolicy/html.

Contributions should preferably be submitted as a .doc attachment.

JESUS V JESÚS

by Stephan Szpajda

Iesus Nazarenus Rex Iudaeorum *Appellant*
v.
Jesús Sosa, and Jesús Sosa Motors *Respondents*
And
Rabbi Weissman, Beth Zion Synagogue of Longeuil
Intervener

INDEXED AS: JESUS V. JESÚS

Files Nos.: 8675309
2008: January 7; 2008 February 7

Present: Clemons CJ., Tallent, Van Zandt, Weinberg, Scialfa

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Blasphemy – Son of God – Ownership – 1457 CcQ - Wrath of God – Sores - Mexican mechanics –" U" accent aigu

CLEMONS CJ. – These proceedings arose from a baffling set of circumstances seldom considered before this court. We must contemplate whether the appellant was justified in unleashing the Wrath of God upon the respondent after the latter failed to change his mechanic garage's registered name and sign pursuant to S.3 of the Decalogue ("Thou shall not take the Lord's name in vain").

The following issues are therefore set before the court:

1) Did the respondent take the appellant's name in vain?
2) By naming his garage "Jesús Sosa Motors", did the respondent violate S.3 of the Decalogue [S.3]?
3) Does the Wrath of God, as employed by the appellant, violate 1457 CcQ?

I)

The civilian system is reluctant to subvert the exclusive nature of ownership. To "take", as per S.3, evidently implies the infringement of the ownership right. To do so in vain is all the worse, as it flagrantly ignores the Lockeian understanding of domain utile while incorporating superfluous mirrors. It is the opinion of this court that taking anything in vain, let alone the name of God, is poor form indeed. Pursuant to the waste-not-want-not doctrine, if you do not want another helping of God's name, simply refrain from taking it.

But what if in taking the taker takes care not to take in vain? S.3 does not distinguish between vain and worthy ends. There is, however, an implied understanding that whatever temporal goals may be pursued, their value is overshadowed by God's reluctance to share. The court cannot but acknowledge this established principle, and proceed with the understanding that all invocations – safe those uttered in humble prayer – are worthy of being on the same short list as murder and desiring your neighbour's donkey.

Does theological ambiguity release Jesús from obligation with respect to S.3? Testifying at the court of first instance, Rabbi Weissman passionately insisted upon his dedication to S.3 and his conviction that this case does not fall within its scope. Referencing centuries of lofty theological scholarship, as well as Monty Python's "Life of Brian", he made a strong case indeed. The Rabbi's testimony, however, was stricken from the record after it was revealed that as a Jew, he is not a Christian.

II)

If Jesus is God and the name of God shall not be taken in vain, it would appear that Jesús is in violation of S.3. But hold on to your confetti, gentlemen. The difference in pronunciation and spelling between "Jesus" and "Jesús" releases the latter from any obligations to the former pursuant to S.3 so long as he continues to operate in a jurisdiction in which "Jesús" is not the standard pronunciation of God's name (Jesus v. Major League Baseball). Much like a Belle Province poutine, the respondent's claim of orthographical distinction satisfies the court.

III)

Is Jesus not beholden to the Civil Code of Quebec? Ostensibly contravening volumes of learned jurisprudence, counsel for the appellant submits that a series of plagues - causing an irksome combination of bodily, material, and moral injuries - did not violate 1457 CcQ. Citing the long list of tragedies attributed to God's will throughout known history, counsel for the appellant insists that this latest instance fits within an accepted pattern of behaviour.
Can the appellant's will, divine as it may be, trump the established legal principles of this nation? We cannot answer the preceding questions without considering whether there is fault under the Reasonable Saviour standard. Articulated in Jesus v. Cute Albeit Sinful Little Girl, Scialfa J. writes for the majority:

> "In keeping with the ongoing and inflexible scope of eternity, the court has no choice but to maintain an objective standard in evaluating Jesus' actions. The objective nature of this test can be maintained however, while particularizing it to account for the Son of God's heightened capabilities. We must thus adhere to the Reasonable Saviour test, despite the potential for absolute liability which inevitably arises. The test shall be in two parts: 1) what would Jesus do? 2) what did Jesus do? If the empirical result of step 2 differs de minimis from the normative onus inherent to step 1, the reasonable saviour test shall not be satisfied. In such in stances, there shall be a presumption in favour of the plaintiff and a requirement of ten Hail

Marys placed upon the defendant. Mumbled verses shall not count toward the prescribed total."

Did Jesus act as the reasonable saviour in the case at bar? Jesús was subjected to years of hardship. His skin grew dry. It soon cracked and developed sores. Dogs were sent to lick the sores. The dogs themselves had sores upon their tongues. The dogs' sores further infected the unfortunate mechanic's existing sores. The competing sores refused to negotiate territorial boundaries and soon engaged in combat. Atrocities ran high. There was much weeping and gnashing of teeth, and so forth.

An angel was soon sent to comfort Jesús, but proved himself unreliable in this regard. "Your suffering is just in the eyes of God" somehow did not carry the force of a simple hug. When the ailing man's eventual suicide attempt was confounded by a last-minute miracle on behalf of his torturer, his patience grew dim. Adding insult to injury, the wondrous act was attributed by the Pope to an obscure Walachian peasant, imputing Sainthood upon the deceased goat herder with much hubbub.

Bloodied, bankrupt, and presently an unwitting host to thousands of eager pilgrims, Jesús was forced to court by the actions of the appellant. Even the common law could not turn blindly to the case at bar.

Conclusion

While I do not find the respondent to be in violation of S.3, his sign cannot be allowed to remain. Bill 101 unequivocally forbids the words "Jesús" and "Motors" from appearing as they do. This would not usually be a complex problem to resolve. In this case, however, a simple translation to the French name "Jésus" would in turn contravene S.3. Unlike the transgression of S.3, however, a violation of Bill 101 does not justify the Wrath of God. In keeping with the principle of proportionately, the court cannot allow plagues and pestilence to be used as instruments of enforcement with respect to *la langue française*. The court therefore finds that Jesus inappropriately unleashed the Wrath of God upon Jesús.

I would order the respondent to change his sign pursuant to Bill 101, and order the Nazarene to cure his victim's sores in keeping with 1457 CcQ and the Reasonable Saviour test. That way, I can expect entry into heaven as well as several free oil changes.

VAN ZANDT J. [*concurring*] – You may be surprised to note that I, the humble and obliging Justice Van Zandt, have something to add to this here case. Having had the opportunity to read my most learned brother's decision (and on the assumption that you have as well), I shall not review the facts or issues before the court. I likewise can see no reason to dispense with the Reasonable Saviour test. It should, however, be modified to account for the pressing public policy concerns which emerge. What these concerns may be I cannot glean, nor can I suggest any pertinent modifications to the test. But after years of being ignored by the shameless boors of this poppycock bench, I have had all that I could take. Go ahead, call this *obiter dictum* – it's still getting printed, you stuffed-shirt wonks.

WEINBERG J. [*dissenting*]- *Meshuganah goyim.*

Appeal allowed in part. Costs may be placed in the small woven basket currently being passed around.

[Editorial, contd. from p 2]

The following week in Talmudic law, Rabbi Whitman revealed that my opinion had lost out in the medieval debates. According to modern Jewish law a finder is not allowed to presume that an owner has given up hope of recovering his lost item, even if it is of little value with no identifying marks. He then told an inspiring anecdote about a woman he knew who had picked up some cash lying in the street and had wanted to donate it to charity, implicitly assuming that the owner must have experienced ye'ush. After he told her the Talmudic legal status of the cash however (it was not hers to donate), she advertised it and was able to find the true owner, who identified himself by stating the exact amount lost. I suddenly thought of my lost hat and was no longer certain about my opinion. The legal norm that I had argued against would have obligated my hat's finder to pick up the item, not use it for herself, and not rest until she found its proper owner, me!

Over the break I had many occasions to ponder the Halakhic law of lost hats, both while I was studying my Talmudic Law coursepack, and while I was showing off Central Canada to my vacationing friend. Because Shelley wanted to see outdoor sights such as the Rideau Canal Skateway, Old Montreal, St. Catherine's and a Caban à Sucre, I had to wear my replacement hat for much of the week. Every time I put it on I thought briefly of the lost hat, becoming more convinced that it was gone forever. I was also bonding with my new hat – so my desire to re-find the old one was diminishing as well.

As reading week ends and I write this editorial, I can finally say that I have officially given up all hope of recovering my favorite hat. Ye'ush. According to Talmudic law – the side of the controversy that won out – if you find it lying around somewhere now, you are allowed to keep it (provided that you are able to tell that it's mine of course - otherwise, it might belong to someone who has not given up on it). But in my moment of ye'ush I have realized something more than the fact that I will never see my hat again: I have realized that I was right in the first place about the law of lost trivial things. Having put my own loss completely behind me, I can now see this law for what it truly is - by looking through the lens of abstract logic instead of emotional personal experience. I still believe passionately that the medieval Jewish scholars should have created a presumption of abandonment so that finders could make personal use of the small common objects that they found which are impossible to attribute to any owner. I cringe to think of the chaos and waste of a world in which an endless number of lost trivial items must be picked up by a person who sees them lying around: and then never thrown out, never used, until the true owner is found. It just makes less sense than the alternative.

Well, there you have it: the sum-product of my reading week vacationing and studying. I can only hope that you don't find this little insight into the law of lost trivial things in medieval Talmudic law too...well... trivial to be interesting- and of course that you had similar success in grappling with the complex academic issues that we confront every day at law school during your own week off.

March 3 to March 7 at McGill Faculty of Law

AFGHANISTAN IN FOCUS:

A Week of Images and Discussion on Canada's Role

Panel Discussion

Stories from Afghanistan: Revisiting Canada's Role

Tuesday, March 4th, at 6:00 p.m.
in the Moot Court

Benoit Turcotte - International Criminal Defence Attorneys Association

Nafay Choudhury - Intern at the Women's and Children's Legal Research Foundation in Kabul

Alex Dobrota - Reporter and photojournalist for the Globe and Mail in Kandahar

Photo Exhibit

Reconstructing Trust?

Monday, March 3rd to Friday, March 7th
In the Atrium

Alex Dobrota - Reporter and photojournalist for the Globe and Mail

Lecture

Should Canada Stay? Human Security in Afghanistan

Thursday, March 6th, at 3:00 p.m.
in the Moot Court

Ashraf Haidari - Counselor for Political, Security and Development Affairs at the Embassy of Afghanistan in Washingon, D.C.

McGill Centre for Human Rights and Legal Pluralism

hrwg McGill Human Rights Working Group

The Innocence Project: Wrongful Convictions

by Innocence McGill

Erin Marshall Walsh has spent the past thirty-two years insisting upon his innocence. Charged with murder in what was presented as an open and shut case, it appears that Walsh has experienced the ultimate failure of the justice system. His trial, plagued by carelessness and deceit, was over before it began. Now, with only weeks to live as a result of his terminal cancer, he may finally get a chance to clear his name. On February 22nd the CBC quoted Federal Justice Minister Robert Nicholson as saying "[T]here is a reasonable basis to conclude that a miscarriage of justice likely occurred in Mr. Walsh's 1975 conviction." This March 14th, the New Brunswick Court of Appeal will hear his plea. Tragic as his case may be, Walsh's situation is hardly unique.

The extent to which wrongful convictions exist in our justice system is not necessarily reflected in our collective consciousness. Media outlets often prefer to highlight cases in which a light sentence or an acquittal ostensibly offends our sense of justice. Indeed, our visceral reaction to criminals who escape punishment is both natural and understandable. For many individuals and opportunistic politicians, this is a more pressing issue than the occasional false imprisonment. If the courts work most of the time, that's good enough, right?

We must, however, strive beyond such fatalism. False imprisonment is real, too common, and deserving of our immediate attention. Over and above the obvious repugnance of imprisoning the innocent, there are many compelling reasons to start paying attention. Firstly, every time an innocent party goes to jail, the guilty remain free. Second, as jurists we shall one day have the responsibility of holding our legal system to the highest possible standard. It is impossible to meet this obligation while ignoring the pleas of the wrongfully accused.

It is no secret that the criminal justice system is riddled with innocent people who, for one reason or another, fell through the cracks. According to Innocence Project (www.innocenceproject.org) statistics, since the advent of improved DNA testing there have been 213 exonerations in the United States alone. In fact, just last month Levon Brooks and Kennedy Brewer, two Mississippians imprisoned since the early 1990s, were cleared when careful scientific testing revealed their innocence. It is difficult to conceive of the terror and hopelessness Brewer must have felt languishing on death row as an innocent man.

In response to these and similar situations, the Innocence Project invites us to "know the cases, understand the causes, and fix the system". As a humble step toward this end, Innocence McGill will be hosting its third annual conference, entitled "Dealing with Wrongful Convictions" on March 12th in the Moot Court. Three speakers – Alan N. Young, Olga Akselrod, and Joyce Milgaard - will discuss wrongful convictions with a view to the legal and personal issues surrounding them.

While they share a common purpose, each speaker brings a unique perspective to the conference. Alan N. Young supplements his day job as associate professor at Osgoode with faithful dedication to everyday justice. Besides authoring Justice Defiled: Perverts, Potheads, Serial Killers and Lawyers, Prof. Young has mounted constitutional challenges to a variety of criminal provisions, most notably with respect to medicinal marijuana and prostitution. In his capacity as professor, Young co-founded and directs the thriving Osgoode Hall Law School Innocence Project.

Likewise emerging from a legal background, former NAACP lawyer and current Innocence Project litigator Olga Akselrod works within the challenging world of the DNA-based exoneration process. As advisor to the Cardozo law school Innocence Project, Akselrod bridges the gaps between professionals, students, and the wrongfully imprisoned.

Complementing the knowledge and experience of the scholar and the practitioner, Joyce Milgaard will offer her own very personal perspective on the human tragedy inherent to wrongful conviction. Her son David spent twenty-two years in jail for a murder which he did not commit. His case achieved notoriety in Canada as it weaved through the courts, culminating in a $10 million settlement and an apology from the Saskatchewan government.

Many of us will be fortunate enough throughout our careers to think of court as time out of the office, a break in routine. Few of us will ever practice criminal law. Yet these facts do not diminish the value of familiarizing ourselves with the challenges faced by those whom the system has failed. On March 12th, you will have the opportunity to do just that. We hope to see you there.

Innocence McGill is a non-profit legal clinic which focuses on researching and investigating claims of wrongful conviction. Visist us at http://www.mcgill.ca/innocence/

Innocence McGill

Dealing With Wrongful Convictions

Speakers' Series

Please Join Us

Wednesday, March 12, 2008
12:30-2:30pm
Faculty of Law, McGill University
3644 Peel Street
Room 100 NCDH (Moot Court)

Speakers:

Joyce Milgaard
Mother of wrongfully convicted
David Milgaard

Alan Young
Director
Osgoode Hall Law School
Innocence Project

Olga Akselrod
Staff Attorney
New York Innocence Project

What Is Innocence McGill?

Innocence McGill is a student-led endeavour centered at the Faculty of Law of McGill University. It is run under the supervision of faculty members and prominent criminal lawyers, and is dedicated to researching and investigating claims of wrongful conviction in the province of Quebec. Our ultimate goal is to help secure the freedom of those who are factually innocent of serious crimes for which they continue to serve sentences in Quebec prisons.

For more information on Innocence McGill, please visit our website at ***www.mcgill.ca/innocence/***.

POINTERS FOR SUCCESSFUL PLEADING IN THE SECOND YEAR MOOTS

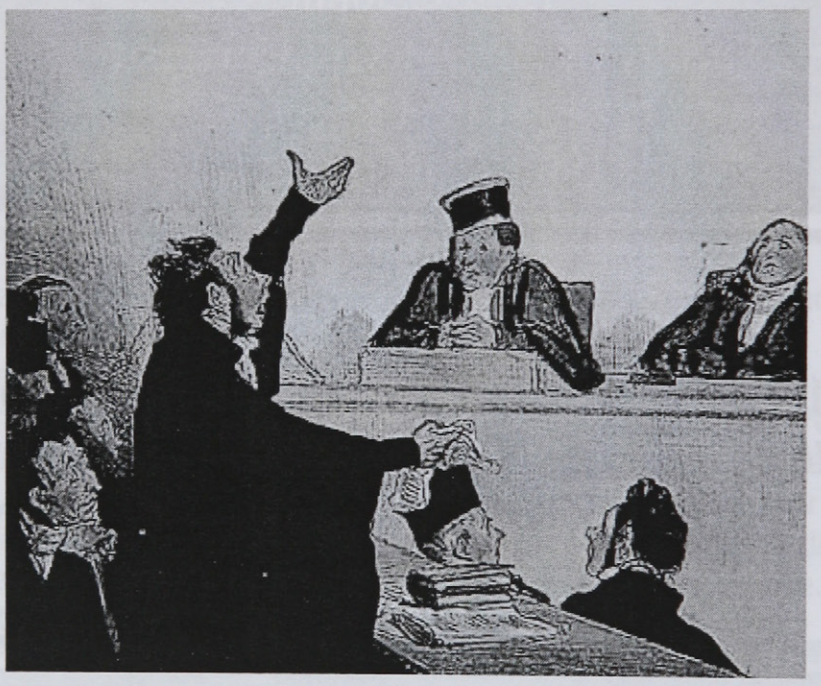
by Joshua Krane (LAW IV)

Now that the factum exercise is over, the real fun of the Second Year Moot begins. Oral pleading is where top litigators can come into their own – a forum where the lawyer (or law student) can capture the attention of the bench and turn an otherwise weak case into a winner.

Oral pleading is an exercise in persuasion. Your task is to convince a judge or judges that he or she should rule in your client's favour. As a persuader, you must try to be part parent, part teacher, and part improv' actor. Your job is to teach the judge why the facts, the law, and public policy support your client's actions. This requires command over the facts and the law, an appreciation for questions of greater public importance, and sensitivity to the weaknesses in your case.

When you begin to prepare your oral arguments, do not disregard the work that you have already done on your factum. You have spent nearly two weeks thinking about the structure of your argument, and you probably had good reasons for constructing your factum as you did. Your oral arguments, however, should not be a regurgitation of the factum. Judges, especially in the context of the Second Year Moot, appreciate nothing less than being read a factum for fifteen minutes. You should also be weary about memorizing a newly minted script. Too much focus on the text of the script can lead to too little attention being paid to the major themes that underscore your case.

As Me Carron explained in her lecture before the Legal Methodology course, successful pleaders are attuned to the policy issues that underlie their cases: the so-called "moral high ground". The problems that you will be pleading are replete with moral issues, and you should have little difficulty framing your client's position in those terms.



When it actually comes time to delivering your arguments before the court, be sure to have your opening seventy-five seconds memorized. In that brief moment, you have full command over the courtroom, as it is unusual for a judge to interrupt you. Make sure that you use that moment to deliver the core information about your case: who you are, who you are representing, why you are before the court, the two or three key facts upon which your case rests, the major issues, the allocation of arguments between you and your partner, and the remedy sought. Once that time is up, you become exposed to questions.

Anything that you can do to build a rapport with the judges will go a long way to advancing your case in their minds. For example, as a matter of courtesy, it is nice to say good afternoon (or good evening) to the judges. You begin to develop a rapport right away and this simple act demonstrates an acknowledgement of the judges' efforts on your client's behalf. It is also courteous to give a small bow before approaching and departing from the podium. Again, this gesture acknowledges the importance of the court and shows respect for the judges.

Humour and charm, when used tastefully, can also go along way to advancing your case. Judges may be disinterested, bored, or unengaged in the material; however, by warming them up to you, they may look at the material with greater interest. A stiff pleader and a disinterested judge make for a dull and lifeless moot.

Finally, try to personalize the case in the pleading. You must show the court that you believe in the client's cause. Be ready with examples of how the outcome will affect the "real world" and how the judge's decision cannot go any other way but in agreement with you. However, when you can't answer a question or you cannot foresee the consequences of a fact situation put before you, don't guess, lie or make assumptions. It is better for your credibility to say "I don't know" and try to address the question later on in your pleading.

Good luck to all of the pleaders.

HOW TO SPOT ISSUES FROM A MILE AWAY

by Francie Gow (ALUM I)

When we were both in first year, a friend of mine prepared particularly hard for his extra-contractual obligations exam and went in having learned all of the material inside and out. Professor Prémont had concocted a clever transsytemic fact pattern that involved, among other things, a flock of geese getting away from their owners and causing all kinds of damage in Quebec before flying to common-law Nunavut and wreaking further havoc there. My friend read the question carefully, wrote until his wrist hurt, and came out feeling that things had gone pretty well. After Christmas, he and his classmates learned that they had almost all lost points for failing to deal with liability for "the act of a thing" (check out art. 1466 CCQ). He understood the concept, yet it had never occurred to him to apply it to the facts.

What I have just described is a classic failure to "issue spot."

Since you have all been through at least one set of law exams by now, you will have heard this term before. My Methodolgy TL was careful to explain to my group the importance of issue spotting when it comes to answering fact patterns. But knowing that you are supposed to spot issues is not the same as being able to do it under pressure.

I had always thought of issue spotting as a general exam-writing skill that I would eventually master simply by writing enough exams. I have since realized that it isn't an exam-writing skill at all: it is a study skill, and it is topic specific. If you study the right way for a civil law property exam, you will become adept at spotting civil law property issues. This will not help you spot contracts issues on your contracts exam. The preparation techniques are pretty much the same from exam to exam, but you have to apply them from scratch every time.

Of course, your starting point is to gain an understanding of the material. How you do that is up to you. However, as my opening anecdote was meant to illustrate, it would be a mistake to stop there. There are two reasons we all make this mistake in the beginning. The first is that it takes a long time to understand the course material, and sometimes the exam sneaks up on us before we even get that far. The second reason is that throughout high school, knowing the material was generally sufficient. Your goal was to learn how X worked, and the question on the exam was "How does X work?"

But that's not how legal fact patterns work. Your summary is like a map for getting you from point M to point N. The problem is that your professor isn't going to take you to M on the day of your exam. He is going to drop you off at Q, and the only tools you will have to help you slash your way through the undergrowth will be your brain and seventeen Bic pens. If you aren't properly prepared, you will wander around in circles until you end up smack in the middle of C+.

Professor Prémont could have set a closed-book exam and asked her students to write everything they knew about liability for the act of a thing. More people would probably have come up with liability for the acts of animals under one's custody. But the profs know that when a client walks into your office, she is not going to ask you what you know about liability for the act of a thing. She is going to be tearing her hair out and muttering somthing about her missing geese and these nasty notices she keeps getting from disgruntled Nunavummiut.

I'm sure you yourselves are all tearing your hair out by now and wondering when I'm going to tell you the recipe for issue-spotting success. Okay, okay! The secret ingredient is... a pinch of shame. (Excuse me?)

I think another little anecdote is in order. In my first-year contracts class, Professor Belley sent us all home with a midterm assignment. I worked very hard on said assignment and got a big fat B- for my troubles. One of the questions involved listing every article of the Book of Obligations in the CCQ that applied to the fact pattern at hand. I had correctly identified the particular nominate contract involved and listed every article I could find that fit the facts. When I got the assignment back, I realized that I had lost a whack of points for forgetting to list the provisions applicable to contracts in general, not to mention those applicable to obligations in general. I felt angry, embarrassed, and, you guessed it, ashamed. Strong emotions are excellent for fixing things into your long-term memory. Since then, I have never forgotten to go back and check the general provisions.

So what? you ask. I still got a B-. What if the same thing had happened on the final? What if the course has a 100% final? It will be too late by then!

Precisely. The trick to issue spotting is to bring on the shame a little earlier in the process, forging the links before you need them. The single best way to do this is to do as many practice exam questions as you can get your hands on. (A hearty thank you to all professors who make practice exam questions available. A heartier thank you to those who also make model answers available.)

If you have model answers at your disposal, you can get away with doing this the day before the exam. I know it's hard, but ideally you should make a legitimate effort to answer the questions as though you

were writing the exam. If you are really short on time, the next-best thing is to make a list of every issue you can see. DO NOT look at the model answer until you are finished. You will likely have missed at least one or two biggies, and you will want to kick yourself. Actually kicking yourself is not strictly necessary, but go ahead if it makes you feel better. All that is necessary is wanting to kick yourself. That little rush of shame will construct a sturdy little neural bridge to take you from Q to N (or at least to M, which is fine, since your summary will get you the rest of the way).

If you don't have model answers, you have to be a bit more organized. In an ideal world, you would have time to make a summary and integrate its contents before the last day of classes, so that you can discuss the practice questions with your professors during review sessions. But if you pull off that feat for even two of your classes every semester, congratulations. You are probably on your way to the gold medal, and you don't need any advice from me.

Under these circumstances, a study group might do the trick. You don't need to have been in one all term. You just need a small group of people to agree to work on the same questions. You should each tackle them individually, then meet for an afternoon and compare answers (or lists of issues). As a group you stand a good chance of covering most of the key points.

Finally, remember not to overdo it. Traumatizing yourself would be counterproductive. Like a pinch of salt in a batch of cookies, just a little shame goes a long way.

Congress batting .000

by Matthew Kissin (LAW I)

Who cares about the mess in Iraq, they lied to get there and screwed up once there, blah blah, that's played out. The economy's in a recession? Nonsense, it's fine, nothing a nice big tax cut won't cure, here's a $200 tax refund, go buy something nice with it, just make sure it's not made in Japan or China, because making smart consumer decisions is un-patriotic. Global warming? A myth invented by pot-smoking hippie scientists with poor hygiene mad they can't afford Hummers. Ok, so maybe global warming does exist, but that's clearly not our fault. According to Homeland Security grand poobah, Michael Chertoff, illegal immigrants are to blame.

The American Congress has no time for these non-issues. It's only interested in problems of national security, the ones which impact kids and threaten the sacred values which Americans hold so dearly. Like the destruction of videotapes. No not those videotapes! They've told us already, the interrogation tapes that the CIA destroyed no longer had any intelligence value. Waterboarding isn't torture, and even if it was, the American government has never used such tactics. Ok, maybe a few times, but that's it. Now spy-gate, that's different! The Patriots videotaped other teams, were punished for doing so and then the NFL destroyed the tapes. Why? Senator Arlen Specter R-PA, wants answers! I'm sure Commissioner Goodell reads the Quid, so here's a free tip, just use the aforementioned "no longer had any intelligence value" line. Works like a charm.

Congress of course has been most notably active with regards to the disgraced American national past-time of baseball. Congress warned Major League Baseball to clean up its act which is akin to Lindsay Lohan telling Britney Spears to stop behaving like a delinquent. They've held a series of hearings probing allegations of steroid use in baseball. There have been some memorable moments. Slammin' Sammy Sosa mysteriously forgot how to speak English when it was his turn to testify and who can forget the Rafael Palmeiro's finger-wagging "Let me start by this: I have never used steroids" speech under oath. Palmeiro later tested positive for steroids. Nothing however surpasses the Roger Clemens circus.

Clemens, perhaps the greatest pitcher of all time, was named in Senator Mitchell's report on the use of steroids in baseball delivered in December 2007. Clemens had been contacted by Mitchell to discuss the findings of the report before it was released so he could convey his side of the story but he declined. The source of these allegations was his former trainer Brian McNamee (ex-New York cop who lied about having a PhD and sheisty performance enhancing drug dealer extraordinaire). Despite his obvious character flaws, his allegations have so far been confirmed by the two other players he named in the same report, Chuck Knoblauch and Andy Pettite. Both have admitted to Human Growth Hormone (HGH) use in the past.

Pettite also happens to be Clemens' best friend and former team-mate and submitted a deposition in which he recalled having a conversation with Clemens about HGH. Clemens has vehemently denied ever using any performance enhancing drugs. He has only admitted to receiving B-12 Vitamin injections which are not banned. The Congressional hearing on Feb. 13, 2008 featuring McNamee and Clemens sitting at the same table promised to be intriguing and it delivered some gems.

During the proceedings Rep. Henry Waxman (referred to by some in Washington as "Nostril-itis") commended Pettite in his opening statements for his honesty. Wait, didn't he initially lie about using steroids? Pettite's kudos were for his deposition which was the main thorn in Clemens' side. Clemens denied ever having discussed HGH and claimed Pettite must have "misremembered". We also learned that McNamee injected Clemens' wife with HGH for a photo-shoot. McNamee also revealed that he never trusted Clemens' and therefore had kept used syringes and beer cans used to inject Clemens which he submitted as physical evidence. Weird. Clemens wasn't only raked across the coals at the hearing. Senator Rep. William Lacy Clay asked him which uniform he would wear when he is inducted into the Hall of Fame (no longer a guarantee) and Rep. Eleanor Holmes Norton concluded her remarks by stating that she was sure he was going to heaven.

The baseball hearings make for great TV but in the end did they produce anything other than great ratings for CPAC? No, not really. Since either McNamee or Clemens was lying perjury charges may be pressed down the road. Clemens' image undoubtedly took another hit. When everyone around you, including your wife and best friend, were using HGH and a shady yet reliable to-date witness who also happened to be your former trainer alleges that you used steroids and you pitched at a high level well into your 40s, innocence is a tough sell. Time and time again, athletes accused of using performance enhancing drugs have asked the public to trust them (see Marion Jones). What has been most disturbing is the extra leeway which Clemens is getting in some media outlets and among the public which screams of a racial double standard since Barry Bonds was never afforded the same benefit of doubt.

More importantly perhaps is the fact that Congress seems to have missed the big picture. They have not investigated numerous allegations that team owners, executives and officials were aware and in some cases

assisted players' use of steroids. The steroid/home-run led to the financial resurgence of baseball following the lockout in 1994-1995 so the link would not be surprising. Meanwhile, the Commissioner who presided over this "disgraceful" era has been retained and even rewarded with a contract extension.

Despite public scandal, scapegoats, a congressional report, congressional hearings, congressional grandstanding and profiteering, the top official responsible is still in power and Congress has accomplished nothing. Sports and politics aren't so different after all.

OPENING THE DOOR TO LIVE-IN CARE-GIVERS' RIGHTS

by Alexandra Dodger (LAW I)

A Critical Discussion of the Live-In Caregiver Program on March 10

March 8th is International Women's Day. Around the globe, women and allies will take a day to reflect and act on the ongoing struggle for gender equality – consider the gains we have made, and the challenges we still face.

At McGill's Faculty of Law, we can see the face of progress and women's rights. A generation ago, the notion that more than half of our students would be women, or that the Chief Justice of the Supreme Court of Canada would be a female might have seemed unthinkable. While women still face multiple inequalities, it cannot be denied that remarkable advancements have been made and many women today are able to have demanding professional careers as lawyers, doctors, businesspeople and more.

Yet, we must ask if and how Canadian society has responded to the realities of women in the workforce. In the 1950s, a man working 40 hours per week could usually sustain a family of four. Today, many two parent households clock over 100 hours per week working for wages, not including all the unpaid work of running a household. Developments like the Live-In Caregiver Program, which has admitted tens of thousands of workers, have been ushered in to fill the gap left by a public childcare system in crisis, and the average, overworked Canadian family.

The overwhelming majority of caregivers admitted through the program are women from developing nations, usually the Phillippines. They are brought in only after they have received a job offer from a Canadian family to live in their home, and watch their children or infirm relatives. In practice, they often function as nurses, teachers, chefs, cleaning ladies, chauffeurs and more. Some have advanced degrees, or worked in hospitals or high schools in their home countries.

Their immigration status in Canada demands that they live with Canadian families, and stay with their employers for at least two years. These two key conditions contribute greatly to the potential for their exploitation. Working as a live-in caregiver often means being on-call 24 hours a day, and the connection between employment and immigration status means women are trapped in employment situations that may leave them open to abuse, harassment or practices such as their employers withholding wages.

Positive progress has been made in the sense that women's work outside the house is now recognized as valuable, although only about 80% as valuable as men's, according to Statistics Canada's latest studies on our nation's persistent gender wage gap. Yet unwaged work within the home still isn't considered valuable. And despite the fact that men in the 21st century take on more unpaid work such as cleaning, cooking and childrearing, studies show women bear a greatly disproportionate burden of such hidden labour. 1 in 5 children in Canada is growing up in a single parent household, the vast majority of which are led by women, households where women carry the burden of close to 100% of childrearing duties.

While some women have become more emancipated, women in the Live-In Caregiver Program have borne heavy costs. Why is it necessary to import workers from other countries to care for Canadian children? Most regions of Canada do not have as developed a childcare system as Quebec's $7 a day program, which still remains inaccessible 4 out of 5 children in the province. In 2004, Ontario had 1,224800 children under the age of 12 with no stay-at-home parents, but only 206,743 regulated childcare spaces (enough for 9% of children). The Ontario Coalition for Better Childcare found that in 2006, 67.8% of mothers whose youngest child was under 3 years of age were active in the workforce.

In the pre-WWII years, Canada also received domestic workers from other countries, but the primary sources were the United Kingdom and Western Europe, and these women entered with landed immigrant status. It was only when Canada began to accept nannies from non-European nations that immigration restrictions were heavily tightened. Ryerson University Professor Sedef Arat-Koc has studied the history of domestic workers in Canada and she writes, "British domestic workers coming to Canada at the turn of the century were regarded as 'daughters of the empire' and 'mothers of the race'...the options were far more restricted for domestics from the 'least desir-

able' racial/ethnic backgrounds, such as black domestic workers. The latter were expected to aid in the reproduction of white families, while the needs of their own families were officially and willfully ignored."

Today, the childrearing assistance that Filipina caregivers provide to Canadian families often means children growing up without their mothers back in the Phillipines. The current immigration regulations keep caregivers from bringing their husbands or children with them to Canada. Even when caregivers are able to successfully apply to become landed immigrants, bringing their spouses or young children can take years. Community advocates point to the damage that 5 to 10 year separations can have on mothers and children.

Workers in the Live-In Caregiver program represent the next set of challenges for the women's movement. Feminism has opened lots of doors for the small percentage of women working as doctors, lawyers, and businesspeople. Yet ironically, it is women facing the demands of these elite professions who tend to utilize the Live-in Caregiver Program, and inadvertently participate in marginalizing other women. Still, professional women can't be solely blamed for the hardships live-in caregivers face. The lack of national public childcare, and the ongoing gender imbalance in the distribution of unwaged work in the home – like raising children – are also factors that contribute to the challenge.

Law students should be concerned about the Live-In Caregiver Program. It creates dubious loopholes in the laws regulating employment and immigration. What other class of employees is forced to stay with a bad employer for 2 years or face deportation? What other class of employees has no choice over where they live? What other class of immigrants cannot even apply to bring their spouses or children with them for years? The program also perpetuates the devaluing of care work, and the notion that childrearing or labour in the home is women's work.

Members of the Human Rights Working Group – Immigration Portfolio, Radlaw, and the Women's Caucus have collaborated to host a panel discussion of these issues, and strategies for change that will be held Monday, March 10 at 6pm. The panel will feature women who have worked as live-in caregivers, their lawyers and advocates, and academics that have studied the program and its effects. Organizers are working to bring some delicious food and refreshments as well as a thought provoking discussion. Please come out and learn more about the social and legal issues facing caregivers in Canada and how law students can get involved.

Opening Doors to Live-In Caregivers' Rights will be panel discussion in the moot court featuring Cecelia Dioxin (Phillipine Women's Centre), Walter Chi-Yan Tom (Immigration & Labour Lawyer, Tom & Associates), Delia de Veyra (PINAY – Filipina Women's Organization of Quebec), Abigail Bakan (Professor, Queen's University) and moderated by Jill Hanley (Immigrant Workers' Centre). The event is Monday, March 10, 6pm, Moot Court.

Social justice careers are possible: Free Conference in Toronto March 14-15, (but no open bar)

by Alexandra Dodger (LAW I)

On Wednesday, February 20, Public Interest Career Day filled the atrium for a few hours. Sadly however, after the free pizza disappeared and students got some face time with practitioners from government agencies and smaller firms, it was over. Why is this sad? Unlike larger firms which have the funds to remind us almost every Thursday afternoon that there's opportunity to work in the huge office towers of Montreal, Toronto and New York, most public interest firms can't afford to give law students free USB keys, red wine and shrimp cocktails, or a string quartet. Human rights internships are promoted with a quick email or posting at the CDO, but don't stare at us every time we reach for a Heenan Blaikie post-it note from the bottom of our Osler backpack.

These firms take up a lot of our mental headspace, yet they're not the kind of law careers that many of us started at the Faculty of Law thinking about. Practicing corporate law can be stimulating and rewarding in its own distinct ways, but for those of us interested in using our legal training to help marginalized communities, challenge systemic inequalities in society, or work for progressive social change, finding a clear career path isn't always easy.

This is why I am so glad that when I was deciding whether to apply to law school a few years ago, I stumbled upon the SpinLaw conference. SpinLaw is an annual conference hosted by students at the University of Toronto Faculty of Law and Osgoode Hall. This

year it will be Saturday, March 15. It's held in downtown Toronto and is free for student participants. It's affiliated with and held the day after Osgoode's Public Interest Career Day (Friday, March 14). This year, the day will feature 38 firms, agencies, unions and other organizations. Registration is at www.publicinterestday.ca.

When I attended SpinLaw in 2006, not only did I meet dozens and dozens of law students from Dalhousie to UBC who were working for social change on their campuses, but I was immensely grateful to see real, in-the-flesh lawyers who actually relished going to work every day, who eked out decent (and in a few cases, quite lucrative) earnings, and who were engaged in social justice law. They weren't just figments of my imagination. They fought poverty, worked for women's rights, promoted justice for the First Nations, worked in solidarity with immigrants and refugees, and represented a real diversity I wasn't sure was possible in the practice of law.

It was meaningful for me to meet these lawyers and think that I could really envision myself in their shoes one day. Their work excited me too. I met Jeff House, a lawyer who was representing American war resisters that had fled from the United States and were seeking refugee status in Canada to avoid being dispatched to fight in Iraq. Beyond the politics of war and peace, I found it fascinating to hear him review the nuts and bolts of Canada's immigration and refugee policies, and the precedents he had discovered for our country accepting soldiers who had voluntarily enlisted as refugees when their home nations tried to send them to fight in illegal wars.

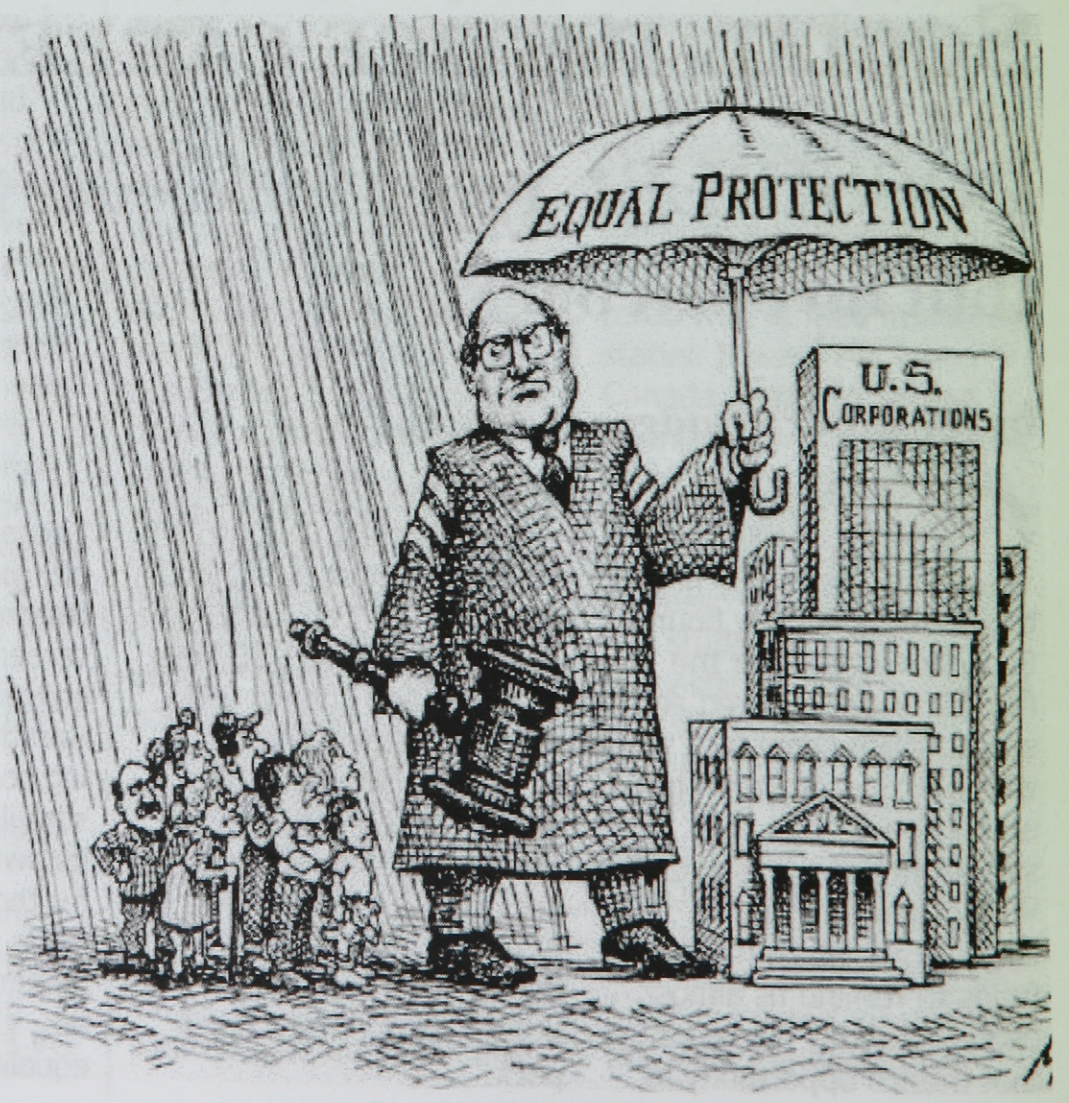
Another speaker was Clayton Ruby, who told us about human rights cases he had worked on. One included the Charter challenge of Michelle Douglas, a lesbian officer who had been kicked out of the Canadian Armed Forces in the late 1980s because of her sexual orientation. Ruby won the case – one of the first Charter decisions to rule a practice discriminatory on the basis of sexual orientation – and the Canadian Army changed their policies.

One of the most profound talks I heard came from Karen Andrews, the executive director of the Rexdale Community Legal Clinic, which serves a low-income neighbourhood of northwest Toronto close to where I grew up. Her daily work with clients from Rexdale was challenging, but rewarding. She stopped evictions, won people's jobs back, got them custody rights or defended them in criminal trials. She scared me a little when she said entire areas of practice were being abandoned by the legal community; clients who needed help with their tenancy issues were so impoverished, most lawyers didn't want to deal with them and abandoned the area of law as a whole. Without paying customers, there weren't many lawyers who specialized in the area and could handle legal aid cases for part of their time. It made me realize that the legal profession really has a duty to make sure the public can access justice and access their rights when it comes to issues like housing.

This year's schedule promises more interesting panels and networking opportunities. A complete breakdown of workshops and panelists is available at www.spinlaw.ca, and they include discussions on how to build a feminist legal practice, aboriginal alliances, the use of tasers, and progressive intellectual property.

Unfortunately, it's not as easy to give public interest law "a try" as it is to "try out" corporate firms. There aren't portes ouvertes events with free dinner and drinks at the small immigration and refugee firms. It might mean taking a road trip to Toronto, but if you're at all curious about meeting law students interested in social justice issues from coast to coast, or hearing from lawyers who were once in your shoes and have been able to pursue the careers they love, then I highly recommend registering for SpinLaw.

Registration for Public Interest Day at Osgoode Hall, and Spinlaw, in downtown Toronto are both free and easy to do online. Visit www.publicinterestday.ca and www.spinlaw.ca. Also, please message me at Alexandra.dodger@mail.mcgill.ca if you are interested in traveling and coordinating a carpool or other travel together from Montreal. Public Interest Day and Spinlaw are March 14 and 15, in Toronto.



The Priorities for our Federation: What Law Students Said

by Dan Jankovic & Alex Herman

Between January 17 and 19, 2008, the Canadian Constitutional Affairs Conference welcomed students from every law faculty across Canada to Quebec City in order to discuss the 'constitutional challenges' facing the federation. Of the 120 student delegates in attendance, well over half filled out a detailed questionnaire, answering questions about the constitution and its (un)likely amendments, the federation and the priorities it needs to address. While the survey results are by no means representative of the Canadian population, they do provide an interesting sample of the opinions some Canadian law students hold about our federation and its constitution.

Selon tous les étudiants ayant répondus aux questions, les priorités « constitutionnelles » de la fédération canadienne sont :

1.Autonomie gouvernementale pour les peuples autochtones
2.Immigration & Intégration (« accommodements raisonnables »)
3.Reforme électorale
4.Déséquilibre fiscal
5.Fédéralisme asymétrique
6.Le rôle des provinces dans l'établissement de la politique fédérale
7.Statut du Québec dans la fédération
8.Reforme du Sénat
9.Intégration approfondie en Amérique du Nord
10.Abolition de la monarchie au Canada

Bien que les étudiants du Québec soient souvent en accord avec ceux du reste du pays, il faut néanmoins noter certaines divergences d'opinion. Par exemple, les étudiants du Québec considerent comme la première priorité le statut du Québec dans la fédération canadienne et comme la septième priorité les questions concernant l'immigration et l'intégration.

The following positions had the highest levels of support among the student delegates (percentages indicate the proportion of students who agreed with the statements):
-Equalization payments should continue (93%)
-Quebec forms a distinct society (88%)
-Aboriginals should have meaningful self-governance (85%)
-A fiscal imbalance exists between the federal government and the provinces (78%)
-Senators should be elected (61%)
-Asymmetrical federalism is the most effective approach to govern the Canadian federation (61%)
-Proportional representation should be introduced in our electoral system (58%)
-The provinces should play a greater role in federal policy-making (57%)

Some issues were noticeably unpopular among delegates:
-Integrating with the US, either through the harmonization of certain policies (18%) or through further economic integration (33%)
-Abolishing the notwithstanding clause in the Charter (30%)
-The equal distribution of natural resources among provinces (30%)
-The level of government is unimportant when services are offered (31%)
-Referendums should be used more frequently (33%)
-Quebec should have additional powers (36%)
-Canada integrates its immigrant population well (37%)
-The Quebecois nation should be recognized constitutionally (46%)

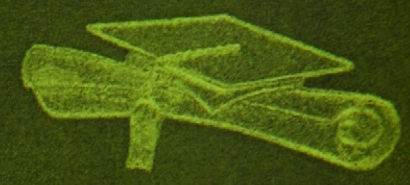
Overall, responses from the student delegates coming from the West/Prairies and Ontario were more inline with the national averages, while those from Quebec and the Maritimes deviated more. Out of 22 questions, the West/Prairies was very close to the national average 18 times and never deviated more than 15% - and that was only once, when Westerners responded lowest on whether natural resources should be shared. Ontario was close to the national average 12 times and never deviated more than 25%.

Quebec was a different story. On questions dealing with the place of Quebec within Canada, the student delegates from Quebec were overwhelmingly in support of additional powers for the province (78%) and the constitutional protection of Quebec's distinct society (89%). Both of these were over 40% higher than the national average. On other issues, Quebec also stood out: abolishing the monarchy (78% in favour compared to 45% nationally), provinces having a greater role in federal policy-making (83% compared to 57%), the use of the federal spending power (22% compared to 48%) and whether Canada accommodates the needs of its immigrants/ethnic minorities (a surprisingly high 78% compared with the 55% national average). However, as much as Quebeckers disagreed, they were very close to the national average on more occasions than not: on equalization, on asymmetrical federalism, on distributing natural resources, on electing Senators, on the importance of the level of government providing a service and on referendums.

The Maritimes, though a smaller pool of delegates, also deviated from the national average considerably on certain questions: additional powers for Quebec (0% compared to 36% nationally), abolishing the monarchy (0% compared to 45%), economic integration with the US (0% compared to 33%), the service being more important than the level of government offering it (63% compared to 31%) and whether the Charter's notwithstanding clause should be abolished (63% compared to 30%). Like Quebec, however, the Maritimes were more often in-line with national averages than not: on provinces playing a greater role in federal policy, on transfer payments, on distributing natural resources, on proportional representation and on referendums.

On only one question were all regions within 10% of the national average: on the non-use of referendums. Only four issues (transfer payments, equalization payments, distributing natural resources and maintaining the notwithstanding clause) had three of the four regions in agreement.

Many thanks to the Dean's Discretionary Fund for its generous contribution



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